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10/049,410	02/07/2002	Udo Bickers	514413-3911	1061

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/049,410
Filing Date: February 07, 2002
Appellant(s): BICKERS ET AL.

Howard C. Lee
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/13/05.

(1) *Real Party in Interest*

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A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 14 and 15 versus claim 17 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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The rejection of claims 14,15 and 17 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,231,070	Narayanan et al	7-1993
5,635,447	Sanders	6-1997

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Grounds of rejection as stated by appellant are correct. A restatement of rejections on record is below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14,15,17 are rejected under 35 U.S.C. 102(b) as being anticipated by Narayanan et al (US 5231070; 7/27/93). Narayanan teaches a method of applying a composition comprising dicamba, bentazon, bialaphos, diruron, linuron, atriazine, or diquat (post emergent herbicides) plus a methacrylate type polymer. Narayanan

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teaches that the composition is applied to the soil in a pre-emergent application. See abstract, column 2 line 64 – column 4 line 47.

Claims 14,15,17 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanders (US 5635447; 6/3/97). Sanders teaches a method of applying a composition comprising atriazine (post emergent herbicides) plus a polyacrylic acid polymer. Sanders teaches that the composition is applied to the soil (a pre-emergent application). See abstract, column 2 line 36 – column 3 line 18.

(11) Response to Argument

I. Upon reconsideration, claim 18 is added to Narayanan's 35 USC 102(b) rejection of record. Claim 18 is added because Narayanan teaches a method of applying a composition comprising glyphosate or bialaphos plus a methacrylate polymer pre-emergently to soil. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Narayanan teaches that a mixture of crop treating chemicals can be employed. See column 15 lines 16-30. The person of ordinary skill in the art would immediately envision that the prior art methodology would be employed to treat any plant, which are non-genetically modified as well as plants, which are genetically modified.

II. Rejection of claims 14,15, and 17 under 35 USC 102(b) as being anticipated by Narayanan will be maintained for the reasons on record and for the reasons as follows. Applicant argues that Narayanan does not anticipate "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "a method of inhibiting the leaching of an active plant growth regulating agrichemical". Examiner argues that Narayanan does

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anticipate the instant invention. Firstly, Narayanan teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 lines 64-66. Examiner also argues that post-emergent herbicides such as glyphosate, and bilanafos can be added to the composition. See column 4 lines 20-32. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to Narayanan teaching "a method of inhibiting the leaching of an active plant growth regulating agrichemical," Examiner points out that the inhibition of leaching means the prevention of the agrichemical from moving from the site of application. Examiner argues that this teaching does not change the composition taught by Narayanan or the active step of application of the composition taught by Narayanan. The instant composition comprising a post-emergent herbicide plus acrylic polymer is taught by Narayanan. Narayanan also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil. See column 2 line 64 – column 3 line 23, column 4 lines 20-32. Applicant argues that Narayanan also does not make the instant invention inherent. Examiner disagrees with Applicant since both Narayanan's invention and instant invention teaches the same active step of applying a composition comprising a post-emergent herbicide plus an acrylic polymer pre-emergently. See column 2 line 64 – column 3 line 23, column 4 lines 20-32.

Applicant argues that claim 17 is not anticipated by Narayanan. Applicant argues that Narayanan discloses "broad recitations regarding the nature of carrier material such as they can be viewed as encompassing of polymers based on acrylic acid or

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methacrylic acid." Applicant argues that Narayanan refers to a broad genus of alternative carriers preferably N-alkenyl lactam homopolymers. Examiner argues that broad claims can be anticipated by a broad teaching in the art. Note that instant claims comprise a Markush group consisting of polymer genus serving as carriers. Because of the broad list of carriers disclosed by the instant claims, it is reasonable to use a broad teaching of the carriers in the art to reject such broad claims. While it is true that Narayanan does disclose that N-alkenyl lactam homopolymers are preferred carriers, it is not necessary that Narayanan teaches an acrylic polymer in an example or as a preferred polymer in order to anticipate the instant invention. It is critical to note that the instant claims are broad and therefore it would be proper to use a broad teaching to anticipate the instant claims.

Applicant argues that Narayanan does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner's burden to show that an effective amount of post-emergent herbicide is the same as the amount of post-emergence herbicide used to inhibit leaching as in Narayanan. Examiner argues that Narayanan teaches a composition comprising 10% post-emergent herbicide and 10% polymer. See column 7 lines 60-68. Note that instant specification discloses that the amount of post-emergent herbicide in the composition can range from 0.001 to 48%. See instant specification page 3 lines 26-31. Since the 10% post-emergent herbicide taught by Narayanan falls within the 0.001 to 48% post-emergent herbicide range disclosed by instant specification, it can be concluded that

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effective amount of post-emergent herbicide used in the instant invention is the same as the effective amount of post-emergent herbicide used to inhibit leaching as in Narayanan. Note that Narayanan's effective amount of post-emergent herbicide anticipates instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Narayanan, one of ordinary skill in the art would have been motivated to use post-emergent herbicides to treat harmful plants post-emergently. Examiner argues that Narayanan anticipates the application of agrichemicals pre-emergently. Narayanan also teaches that the agrichemical include herbicides such as glyphosate and bilanafos which are post-emergent herbicides. See column 2 line 64 – column 3 line 23, column 4 lines 20-46. See also instant specification page 3 line 35.

III. Rejection of claims 14,15, and 17 under 35 USC 102(b) as being anticipated by Sanders will be maintained for reason on record and reason as follows. Applicant argues that Sanders does not anticipated "controlling the growth of undesirable harmful plants pre-emergently can be accomplished with a post-emergences herbicide" but rather teaches "enhancing the absorption/penetration of an herbicide into a plant cell/tissue". Examiner argues that Sanders does anticipate the instant invention. Firstly, Sanders teaches a polymer / agrichemical composition is applied to the plant or surrounding soil area in a pre-emergent application. See column 2 line 36 – column 3 line 18. Examiner also argues that to the composition is added post-emergent herbicides such as glyphosate, and atrazine. See column 1 lines 10-41,

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column 2 lines 19-31. Note that instant specification discloses that said herbicides are post-emergent herbicides at page 3 line 35. With respect to Sanders' teaching "enhancing the absorption/penetration of an herbicide into a plant cell/tissue," Examiner points out that the enhancing absorption/penetration is to the prevention of the agrichemical from moving from the site of application. Examiner argues that this teaching does not change the composition taught by Sanders or the active step of application of the composition taught by Sanders. The instant composition comprising a post-emergent herbicide plus polyacrylic acid is taught by Sanders. Sanders also teaches the instant active step of applying the composition comprising a post-emergent herbicide pre-emergently to soil. See column 2 line 36 – column 3 line 18. Applicant argues that Sanders also does not make the instant invention inherent. Examiner disagrees with Applicant since both Sanders' invention and instant invention teaches the same active step of applying a composition comprising a post-emergent herbicide plus polyacrylic acid pre-emergently. See column 2 line 36 – column 3 line 18.

Applicant argues that claim 17 is not anticipated by Sanders. Applicant argues that Sanders discloses "broad recitations regarding the nature of carrier material such as they can be viewed as encompassing of polymers based on acrylic acid or methacrylic acid." Applicant argues that Sanders refers to a broad genus of alternative carriers preferably polyaspartic acid. Examiner argues that broad claims can be anticipated by a broad teaching in the art. Note that instant claims comprise a Markush group consisting of polymer genus serving as carriers. Because of the broad list of carriers disclosed by the instant claims, it is reasonable to use a broad teaching of the

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carriers in the art to reject such broad claims. While it is true that Sanders does disclose that polyaspartic acid is the preferred carrier, it is not necessary that Sanders teaches an acrylic polymer in an example or as a preferred polymer in order to anticipate the instant invention. It is critical to note that the instant claims are broad and therefore it would be proper to use a broad teaching to anticipate the instant claims.

Applicant argues that Sanders does not teach with sufficient clarity or detail that the amount of post-emergent herbicide combined with the carrier material is the same or is encompassed by the instant claims. Applicant argues that it is the Examiner's burden to show that an effective amount of post-emergent herbicide is the same as the amount of post-emergence herbicide used to inhibit leaching as in Narayanan.

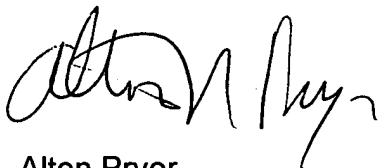
Examiner argues that Sanders' effective amount of post-emergent herbicide anticipates instant effective amount of post-emergent herbicide since instant claims make no claim to a specific amount or range amount of post-emergent herbicide.

Applicant argues that based on the teaching of Sanders, one of ordinary skill in the art would be motivated to use post-emergent herbicides to treat harmful plants post-emergently. Examiner argues that Sanders anticipates the application of agrichemicals pre-emergently. Sanders also teaches that the agrichemical include herbicides such as glyphosate and atrazine, which are post-emergent herbicides. See column 1 lines 10-41, column 2 line 19 – column 3 line 18.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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AU 1616
July 11, 2005

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